

1 US BEVERAGE, INC.,

2 Plaintiff,

3 v.

4 JOHN BUSTER WALKER, II, and TRIDENT MARKETING,

5 INC.,

6 Defendants.

7 -----
8 JOHN BUSTER WALKER, II, and TRIDENT MARKETING,

9 INC.,

10 Counterclaim Defendants,

11 and

12 GRADY DOWLING KITTRELL, THOMAS GOING CLARK,

13 III, and NORMAN "BUDDY" TODD,

14 Third Party Defendants.

15
16 CIVIL ACTION NO.

17 2:06-CV-496-SRW
18
19
20

21 DEPONENT: Norman Todd

22 DATE: September 15, 2006
23

STIPULATIONS

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

US BEVERAGE, INC.,
Plaintiff,

vs.

JOHN BUSTER WALKER,
II, and TRIDENT
MARKETING, INC.,
Defendants.

CIVIL ACTION NO.
2:06-CV-496-SRW

JOHN BUSTER WALKER,
II, and TRIDENT
MARKETING, INC.,
Counterclaim
Plaintiffs,

vs.

US BEVERAGE, INC.,
Counterclaim
Defendant,

and

GRADY DOWLING
KITRELL, THOMAS
GOING CLARK, III, and
NORMAN "BUDDY" TODD,
Third Party
Defendants.

* * * * *

DEPOSITION OF NORMAN TODD,
taken pursuant to notice and stipulation on
behalf of the Defendant/Counterclaim
Plaintiff, in the Law Offices of Copeland,
Franco, Screws & Gill, 444 South Perry Street,
Montgomery, Alabama, before Tiffany B.
Beasley, Certified Court Reporter and Notary
Public in and for the State of Alabama at
Large, on September 15, 2006, commencing at
4:23 p.m.

It is stipulated and agreed by and
between counsel representing the parties that
the deposition of **NORMAN TODD** may be taken
before Tiffany B. Beasley, Certified Court
Reporter and Notary Public in and for the
State of Alabama at Large, without the
formality of a commission; and all formality
with respect to other procedural requirements
is waived; that objections to questions, other
than objections as to the form of the
questions, need not be made at this time, but
may be reserved for a ruling at such time as
the deposition may be offered in evidence or
used for any other purpose by either party as
provided by the Federal Rules of Civil
Procedure.

It is further stipulated and agreed by
and between the parties hereto and the
witness, that the signature of the witness to
this deposition is hereby waived.

2

APPEARANCES

FOR THE PLAINTIFF/COUNTERCLAIM DEFENDANT/THIRD
PARTY DEFENDANTS:

C. NELSON GILL, ESQUIRE

Copeland, Franco, Screws & Gill

444 South Perry Street

Montgomery, Alabama 36104

FOR THE DEFENDANT/COUNTERCLAIM PLAINTIFF:

RAYMOND L. JACKSON, JR., ESQUIRE

CLIFF TUNNELL

660 North College Street

Suite D

Auburn, Alabama 36830

ALSO PRESENT:

THOMAS GOING CLARK, III

JOHN BUSTER WALKER, II

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1 A. Not returning them, because once you take them
 2 off the machine, they're not any good anymore.
 3 Q. Okay. Do you know if those materials have
 4 been thrown away or destroyed?
 A. I would assume they were thrown away. I mean,
 6 that would be -- that would be my guess. I
 7 don't know. I'm not there when it's
 8 happening.

9 Q. But you're aware that your company received a
 10 cease-and-desist notice requiring the removal
 11 of Juice Alive point-of-sale materials;
 12 correct?

13 MR. GILL: Object to the form.

14 A. I never seen this letter until I received my
 15 lawsuit. But I was instructed to change out
 16 the POS on the machines, sir, have it done.
 17 Q. When were you instructed to do that?
 18 A. Sometime after the Alabama show, sir. I don't
 19 know the exact dates.

20 Q. What were you told about why US Beverage chose
 21 to change to the Fruzer brand?

22 MR. GILL: Object to the form.

23 A. Basically, I wasn't told anything about it.

30

1 The only thing -- the only knowledge that I
 2 have about it was the knowledge that I
 3 obtained listening to the conversation between
 4 the two of them the night at dinner after the
 5 Alabama show was over.

6 Q. What do you recall about them discussing the
 7 Fruzer brand or implementing --

8 A. The Fruzer brand wasn't discussed at that
 9 moment. That wasn't even in existence.

10 Q. Okay. Well, what conversation are you
 11 referring to at dinner between -- I guess, you
 12 were talking about John Walker --

13 A. I'm confused -- what was the question again?

14 Q. I was asking you about what -- what you heard
 15 or understood was the -- I guess, the
 16 reasoning behind shifting to the Fruzer brand
 17 for US Beverage.

18 A. Well, it started, like I said, at the dinner
 19 table between -- the conversation between John
 20 Walker and Tom Clark, when John Walker
 21 expressed to Tom that he had outside companies
 22 that were willing to pay him more for the
 23 product than what US Beverage had agreed to

1 pay him for the product, and if US Beverage
 2 didn't compromise or come to some kind of
 3 medium on a higher paying price per label for
 4 the boxes, that he was going to have to go
 5 with these other companies so that he could
 6 make more money.

7 Q. Anything else you remember being told or
 8 learning about, you know, the shift from Juice
 9 Alive to Fruzers by your company?

10 A. No, sir.

11 Q. Who introduced you to the Fruzers brand?

12 A. Who introduced me to the Fruzers brand?

13 Q. Yes.

14 A. Tom Clark.

15 Q. How did he do that?

16 A. I went with Tom Clark to the BLR agency and
 17 went over the artwork with...

18 Q. When did that occur?

19 A. I'm not sure what month, sir. I just know it
 20 was sometime after that -- the Alabama show.

21 Q. Did the BLR agency prepare the POS materials
 22 for Fruzers?

23 A. They created the artwork for it, sir. I'm not

32

1 sure who actually prepared it.

2 Q. And, I guess, the artwork would have been sent
 3 to a printer?

4 A. Yes, sir.

5 Q. What sort of POS materials does US Beverage
 6 have for Fruzers?

7 A. Same as I've already depicted for you.

8 Q. How do you think the Fruzers brand compares in
 9 success in the marketplace to the Juice Alive
 10 brand?

11 MR. GILL: Object to form.

12 A. I think that the label itself is more
 13 appealing to the children because it's more of
 14 a child -- I mean, it's more of a -- it's more
 15 attractive to me for a child than what --
 16 Juice Alive. I mean, that's my opinion.

17 Q. So you're happy with the Fruzers brand as a
 18 sales manager for US Beverage?

19 MR. GILL: Object to the form.

20 A. I would say at the present moment, yes.

21 Q. Do you think the Fruzers brand is a better
 22 brand name than Juice Alive?

23 MR. GILL: Object to the form.

1 A. I can't speculate. I'm not going to make a
2 speculation on that.

3 Q. But you're in the business, aren't you?

4 A. I'm in the business, but I've just answered
that same question.

6 Q. Are you personally aware of any customers that
7 US Beverage has lost because of John Walker?

8 A. Yes, sir.

9 Q. Okay. Can you list those?

10 A. Lincoln County, Mississippi.

11 THE REPORTER: I'm sorry. Repeat.

12 THE WITNESS: Lincoln.

13 Q. Okay.

14 A. Oxford, Mississippi.

15 Q. Okay.

16 A. The Choctaw Indian Tribal School in
17 Philadelphia, Mississippi.

18 Q. Okay.

19 A. Pontotoc County School System in Mississippi.

20 Q. Okay.

21 A. That's all I can think of, sir.

22 Q. Okay. When did US Beverage lose Lincoln
23 County as a customer?

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1 A. In August '06.

2 Q. Okay. Why did US Beverage lose Lincoln County
3 as a customer?

4 A. Because a -- an agent of John Walker's -- I'm
5 not sure if it was Scotty West or if it was
6 actually Mr. Walker himself, went to
7 Beau Simonson, which is the CND director for
8 the school system there, and attempted to sell
9 Juice Alive product to Mr. Simonson, at which
10 time they instructed Mr. Simonson that he was
11 going to have to bid the product out because
12 of his expenditures on the -- on the
13 particular product. And Mr. Simonson didn't
14 notify US Beverage that there was a bid
15 situation. So when I -- I received a phone
16 call a week after I had called to check on
17 Mr. Simonson and see how everything was going,
18 and his secretary expressed to me that
19 everything was fine.

20 I received a phone call the
21 week after that from him telling us that he
22 had changed companies, that he had went with
23 Juice Alive, and that we needed to pick up our

1 machines. So two days later, I picked the
2 machines up.

3 Q. Is it you understanding that there was a bid
4 process for Lincoln County school?

5 A. According to Mr. Simonson, after he rechecked
6 and called me back the third time, he told me
7 that there was a bid process and that all he
8 had to do was put it into the local paper, I
9 think he said, two weeks prior to the bid
10 opening. I'm not sure of the exact time
11 frame, but that was all he had to do. That
12 was -- and that's what he said he did.

13 Q. And you blame John Walker for US Beverage not
14 bidding on the Lincoln County --

15 A. I don't blame him for US Beverage not bidding
16 on the contract, but my personal opinion, I
17 feel that he shouldn't be competing against US
18 Beverage in known US Beverage accounts when
19 he's -- as far as I'm told, is still an
20 officer of this corporation.

21 Q. Do you know if Lincoln County is within
22 200 miles of Montgomery, Alabama?

23 A. Sir, I don't know how many miles it is from

36

1 here to there.

2 Q. Do you know what part of Mississippi Lincoln
3 County is?

4 A. It's close to the Louisiana line.

5 Q. Would that be roughly southwest?

6 A. Yes, sir.

7 Q. Okay. What about Oxford, Mississippi,
8 schools? Is that the school system we're
9 talking about, Oxford, Mississippi?

10 A. Yes, sir. Oxford City schools -- Separate
11 School District.

12 Q. Why did US Beverage lose the -- Oxford as a
13 customer?

14 A. Because either -- once again, either John
15 Walker or Scotty West approached Amy Murphy,
16 which is the CND at Oxford Separate School
17 District, told her that they could promise her
18 POS material, a lower price on the product,
19 new machines, and if she would transfer to --
20 to use their product, to use Juice Alive
21 product, and she chose to do so. She didn't
22 put it out for bid; she just swapped. I got
23 an e-mail from her, which you have that